Mark Lines, Inc. *and* Amalgamated Transit Union, AFL-CIO-CLC. Cases 6-CA-13135 and 6-RC-8640

May 12, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On December 9, 1980, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.[1]

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Mark Lines, Inc., Plum Boro, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election held at Plum Boro, Pennsylvania, on February 14, 1980, in Case 6-RC-8640 be, and the same hereby is, set aside, and that Case 6-RC-8640 be, and the same hereby is, severed from Case 6-CA-13135 and remanded to the Regional Director for Region 6 for the purpose of conducting a new election.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[1] Respondent has also requested oral argument. This request is hereby denied as the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We also note that the correct citation to *Super Thrift Markets, Inc. t/a Enola Super Thrift* (at sec. IV of the Administrative Law Judge's Decision) is 233 NLRB 409 (1977).

[3] In the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's dismissal of the allegation that Respondent violated Sec. 8(a)(1) of the Act when Supervisor Jack Tressler asked employee Virginia Thielman what she thought about the Union. We also adopt, *pro forma*, the Administrative Law Judge's dismissal of the allegation that Respondent violated Sec. 8(a)(1) of the Act when Supervisor Thomas Tangretti questioned several employees as detailed in the Administrative Law Judge's Decision.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: Upon an original unfair labor practice charge filed on February 8, 1980, a complaint was issued on March 31, 1980, alleging that Respondent independently violated Section 8(a)(1) by coercive interrogation, threats, surveillance, creating the impression of surveillance, and by informing employees that designation of a union would be futile. In its duly filed answer, Respondent denies that any unfair labor practices were committed.

Pursuant to a representation petition filed on November 14, 1979, in Case 6-RC-8640, a Decision and Direction of Election was issued by the Regional Director for Region 6 on January 14, 1980. By virtue thereof, a secret-ballot election was conducted on February 14, 1980, among the employees in the unit found appropriate. The results revealed that, of 117 eligible voters, 45 ballots were cast for, and 45 against, representation by the Petitioner-Union, with 17 challenged ballots, which were determinative. Additionally, the Charging Party-Petitioner thereafter filed timely objections to the election. Following investigaton, on June 17, 1980, the Acting Regional Director for Region 6 issued his "Supplemental Decision on Challenges and Objections, Order and Notice of Hearing." Pursuant thereto, Objections 1, 2, and 3 were overruled. However, with respect to Ojection 4, which generally alleges that, "by these and other acts, the Employer engaged in conduct which improperly interfered with the conduct of the election," the Acting Regional Director concluded that evidence developed showed misconduct raising substantial and material issues of fact which, like the determinative challenges, warranted a hearing. Accordingly, by order dated June 17, 1980, Case 6-RC-8640 was consolidated with Case 6-CA-13135 for the purpose of hearing, ruling, and decision by an administrative law judge.[1]

Said hearing was conducted before me in Pittsburgh, Pennsylvania, on August 26, 1980. After close of the hearing, a brief was filed by Respondent-Employer.

Upon the entire record in this proceeding, including my direct observation of the witnesses while testifying and their demeanor, and consideration of the post-hearing briefs, I find as follows:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT EMPLOYER

Mark Lines, Inc., is a Pennsylvania corporation engaged in the transport by motor bus of school children in various school districts within the Commonwealth of Pennsylvania.

[1] The 17 challenges no longer present a viable issue. At the hearing, challenges to the 12 ballots made by the Board agent and challenges to the ballots of 5 voters made by the Petitioner-Charging Party were withdrawn. Accordingly, pursuant to the direction by me, the 17 unresolved challenges, on September 11, 1980, were opened and counted. The final tally disclosed that, of 117 eligible employees, 59 cast ballots against, and 48 for, representation by the Petitioner. There were no further unresolved challenged ballots.

During the 12-month period ending January 31, 1980, Mark Lines, Inc., in the course and conduct of said operation, derived gross revenues in excess of $250,000, and purchased goods and materials valued in excess of $50,000 from enterprises within the Commonwealth of Pennsylvania, each of which enterprises received said products, goods, and materials directly from points outside the Commonwealth of Pennsylvania.

The complaint alleges, the answer admits, and I find that Respondent Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Amalgamated Transit Union, AFL-CIO-CLC, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. CONCLUDING FINDINGS

A. *The Issues*

At stake in this proceeding is the validity of an election in which the employees rejected union representation. A rerun election is sought upon allegations in the complaint, which also fall within the broad penumbra of the Union's Objection 4 in Case 6-RC-8640. Such allegations are limited to independent 8(a)(1) violations which were imputed to Thomas Tangretti, Respondent's director of administration, Terminal Manager Jack Tressler, and Ernie Markitell, Respondent's president.

B. *Background*

It appears that Respondent holds contracts for the transport of school children in 14 school districts. However, the sole facility involved here is the Employer's terminal located in Plum Boro, Pennsylvania. From that facility, the school districts of Plum Boro and Burrell only are serviced. It appears that drivers are regularly assigned to either of the separate school districts. It also appears that Plum drivers came into Respondent's employ within a 12-month period preceding the instant organization drive. Previously, that district was served by a competitor, the former employer of Plum drivers retained by Respondent. From its inception the organization drive apparently was waged primarily among the Plum drivers, for, the unit sought by the Union in Case 6-RC-8640 was limited to them. However, contrary to the Union, Burrell drivers were included by the Regional Director who determined that a single overall unit of all drivers assigned to the Plum Boro facility was appropriate.

Beyond the foregoing, there is a dearth of factual development as to the nature and initiating causes of the organization campaign.

C. *Case 6-CA-13135*

Miscellaneous 8(a)(1) Allegations

1. The December 1979 conversation between Patricia Ruggiero and Terminal Manager Tressler

It is alleged that on December 14, 1979,[2] Respondent violated Section 8(a)(1) by Tressler's threat of unspecified reprisal. Testimony in support of the aforesaid allegation was offered through Patricia Ruggiero, a driver for the Plum school district. According to her testimony, while she was assisting a new driver, Marla Brown, who sought to bid on a charter trip, Tressler approached, and said, "Thanks a hell of a lot, why don't you keep your big mouth shut," adding that Ruggiero "was on thin ice." When Ruggiero asked Tressler if he were harassing her, he turned and went away. Tressler admitted that, on the occasion in question, he did in fact interfere, telling Ruggiero to let Brown pick her own charters and that the latter did not need outside help. He denied telling Ruggiero that she was on thin ice. I do not believe Ruggiero. In any event, her testimony would hardly merit an unfair labor practice finding. The alleged reference to "thin ice" was not expressly linked with protected activity and, elsewhere, evidence is lacking which would support an inference that such was the case. Ruggiero apparently was not among those called by the Union to support its position at the preelection hearing,[3] and there is no evidence that, prior thereto, she engaged in union activity or that Respondent had reason to suspect that she was so engaged. The 8(a)(1) allegation in this respect shall be dismissed.

2. The January 1980 conversation between Tressler and Virginia Thielman

Thielman, a driver assigned to the Plum district, testified that, in January 1980, she was elected to the Plum drivers' committee. Although the nature of this committee is not otherwise defined on the record, it presumably was a support arm of the Union in the organization effort. Tressler testified that, shortly after her January election to said committee, she was told by Tressler, "[N]ow that you're on the committee, you are walking on thin ice." Other than the foregoing, Thielman had no recollection of the circumstances surrounding this remark or any other part of the exchange with Tressler on that occasion.

Thielman goes on to testify to a further conversation with Tressler a few days later. She asserts that Tressler took the opportunity to explain that "he worked union shops before and he didn't think it was going to work here," whereupon, according to Thielman he asked, "what I thought about the Union. . . ." Thielman claims to have responded by indicating that she "stood on the 5th Amendment." With that, according to Thielman, the conversation ended.

[2] All dates refer to 1980 unless otherwise indicated.

[3] Although the preelection hearing on the Union's representation petition was held on December 14, 1979, Ruggiero did not attend.

Thielman's testimony as to these conversations is not squarely denied. Although Tressler specifically denied ever having called Thielman into his office for the purpose of questioning her concerning her feelings relative to the Union, and indicated that Thielman habitually and frequently entered his office on her own business, Thielman's testimony was in all other respects allowed to stand uncontradicted. I had no reason to disbelieve the material testimony of this incumbent employee and, based thereon, I find that Respondent independently violated Section 8(a)(1) by coercively suggesting that her employment was imperiled by her support of the Union.[4] However, I dismiss the allegation based on the subsequent interrogation as to her reasons for supporting the Union as isolated, not shown to evolve from any systematic pattern of interrogation, and as occurring with respect to an employee whose union activity had previously become manifest.[5]

3. The union meeting of January 27, 1980

On January 27, a union meeting was scheduled in response to the Regional Director's Decision and Direction of Election. Contrary to the Union's position, the Regional Director, after a hearing, concluded therein that the unsought Burrell district drivers were to be included in the appropriate unit. Hence, the Union on January 27 met with the Burrell drivers, to inform them of the implications of their inclusion in the organization drive.

Several allegations relate to this meeting and its aftermath. First it is alleged that Respondent violated Section 8(a)(1) by maintaining surveillance thereof. This allegation is unsubstantiated. It is true that certain Burrell drivers who attended were identified as having openly made recordings of what transpired at that meeting. It also appears that on the next day the recording was turned over to Tressler, who listened to at least part of same. Nonetheless, the evidence fails to disclose that employees involved in taping the meeting acted as agents, supervisors, or representatives of Respondent, or that they did so under direction, authorization, or request of anyone having such status. Accordingly, as there is no evidence on which a conclusion could be founded that the employee activity involved was chargeable to Respondent, the allegation of surveillance shall be dismissed.

However, the complaint further alleges that the tape of the meeting was ultimately used in a manner violative of Section 8(a)(1). Thus, undisputed testimony offered by the General Counsel establishes that on January 28, the day after the meeting, Tressler played back the tape, which had been officiously provided by certain employees. He did so in his office, with the door open, and the replay was loud enough so that employees outside and in adjacent areas could also hear. It would seem from the General Counsel's own testimony that all employees who attended the meeting would necessarily have been aware of the taping thereof. Furthermore, Tressler's opportunity to hear the tapes was not shown to have been provided by anything more than a spontaneous gesture on the part of employees. Nonetheless, Tressler in availing himself of the opportunity was obliged to do so in a fashion guarding against any impingement of the employees' Section 7 rights. Thus, while the Act, in the circumstances, was not offended merely by Tressler's listening to the tapes, he did so in a fashion which plainly alerted employees that union activity conducted beyond the eye of management was not necessarily beyond its ear. As such the conduct of Tressler tended to impede employees in the exercise of the rights guaranteed them by the Act and I find that the overt use of the tapes in an area frequented by employees and adjacent to an area utilized by drivers as a gathering place, irrespective of his intent or customary practice, violated Section 8(a)(1) of the Act by creating the impression that union activity was subject to surveillance.

The complaint further alleges that Tressler, also on January 28, threatened employees with more onerous working conditions as well as other more stringent enforcement of work rules and other unspecified reprisals if they selected the Union.

The General Counsel attempted to substantiate these allegations through testimony of drivers Thomas Davis, Ruggiero, Bentz, and Thielman.

Thus, Davis, a driver for the Burrell school district, testified that he attended the union meeting on January 27, and that the next morning at 6 o'clock, he was at the Plum garage to gas his bus. He related that, after doing so, he turned in some paperwork whereupon Tressler stated, "Tom, I got enough on you to fire you." Davis claims to have mentioned the fact that the union meeting the previous night was taped and requested that Tressler play the tapes because, whatever Davis said at the meeting, he had mentioned to Tressler previously. Tressler apparently stated, "[N]ever mind about the tapes," charging instead that files on Davis disclosed that Davis was the subject of complaints and that the latter's services were unwanted in the Burrell district as well as other districts serviced by Respondent. Davis replied that that was strange, as he had never heard that before, and would like proof. He claimed also to have requested to meet with Markitell, but that Tressler indicated that this was not possible. According to Davis, at some point in their conversation, Tressler alluded to the fact that "Markitell wouldn't want a union in here." According to Davis the conversation ended with his indicating that Tressler was the boss but that, if he did anything wrong, Tressler had better show him.

Tressler indicated that he could not recall, specifically, a meeting with Davis on January 28, but admits that this was possible. He denied having made any statement that he had enough on Davis to fire him. In this instance, I was inclined to believe Tressler. Davis was a thoroughly incredible witness. No indication exists that Davis had manifested union support prior to January 28. And, although he attended the union meeting on January 27, other Burrell district drivers had done so as well, and it

[4] Respondent, in its post-hearing brief, argues that the foregoing violations could have had no impact upon the election of February 10, as they occurred subsequent thereto. This claim is based upon a faulty interpretation of the record. Both conversations were placed by Thielman in January 1980 shortly after her election to the "Plum Committee" for the drivers.

[5] Cf. *PPG Industries, Inc., Lexington Plant, Fiberglass Division*, 251 NLRB 1146 (1980), where the questioning extended to a number of employees.

is inferrable, on this entire record, that this group was not generally regarded as supportive of the Union's interest in the campaign. Davis, though having attended and asked questions during the meeting, expressed no opinions, and indeed the only specific example of his posture therein was his questioning the Union as to why the Burrell drivers had been brought into the vote. It is also noted in this connection that testimony of certain other witnesses called by the General Counsel strongly implies that Respondent's agents did not learn of what had transpired at the union meeting until later on the morning of January 28. Furthermore Davis impressed me as a generally unreliable witness, prone to relate argumentation garnered from imagination, rather than the facts as they occurred. His testimony did not ring true and generally struck me as inaccurate. Accordingly, the 8(a)(1) allegation based on his testimony shall be dismissed.

Ruggiero testified to another incident involving Tressler which occurred later that morning. Thus, she related that Tressler approached her as she was sitting with a group of drivers and stated, "I understand you had a meeting with the Burrell drivers yesterday." Ruggiero acknowledged that this was so, adding that Tressler would "have 3 hours of enjoyable listening because . . . they taped the meeting." Tressler, according to Ruggiero, then pointed his finger at her and said, "[T]he day after the election the Union goes in . . . Mr. Markitell will put you on strike . . . I'll bet you my pay against you [sic] that you'll be on strike the day after the Union gets in." Ruggiero further observed that Tressler also indicated that Burrell buses, which the Company permitted to be housed outside the Plum facility at locations convenient to the Burrell drivers, would be relocated if the Union were designated, at fixed sites, including the Plum garage.[6] Counsel for the General Counsel called Virginia L. Bentz and Thielman to corroborate Ruggiero's testimony.[7]

Bentz' attempt at corroboration was as follows:

> Jack approached us and said that if the Union gets in that Mr. Markitell would put us on strike the next day. He also said there would be reprimands and suspensions for what the drivers was getting away with now and also that our buses would be moved further away, located at different places so that we would have further to travel to get our buses.

According to Bentz, in a subsequent conversation between Tressler and Ruggiero, he indicated that he would bet his pay against her pay that the employees would be out on strike the day after the Union was designated.

Virginia Thielman, also a Plum district driver, testified that, though she witnessed a conversation, all that she overheard was Tressler state "he would bet Mrs. Ruggiero, his week's pay against hers that if the Union got in Mr. Markitell would have us on strike the next day."

Tressler acknowledged a conversation with Ruggiero on January 28. He claims, however, that with respect to the possibility of a strike he simply said, "I will bet you that if the Union wins, they're going to have you out on strike the next day." He denied mentioning Markitell's name or making any statements concerning reprimands or suspensions.

I was inclined to believe Tressler over Thielman, Ruggiero, and Bentz. Thielman's recollection of the incident impressed me as a bit too selective and Bentz' recollection seemed overreached. Thus, Bentz alludes to a clear threat of reprisal concerning Respondent's disciplinary approach, which neither Thielman nor Ruggiero confirmed. Furthermore, Bentz' testimony as to the change in bus location differed substantively from that described by Ruggiero. With respect to the strike issue, the testimony of all three was suspect as a product of hurried concoction rather than independent presentations of what each separately witnessed and independently recalled.[8] Additionally, on the basis of all the evidence, I find it more likely that Tressler would have placed the onus upon the Union, rather than Markitell in arguing that a strike would ensue.[9] On balance, however, I am inclined to credit Ruggiero and Bentz with respect to the threat to eliminate overnight parking privileges. Thus, Tressler, who had no independent recollection of the conversation with Ruggiero on January 28, did concede that he had been asked by a Burrell district driver what would happen if the Union got in, whereupon Tressler admittedly responded by indicating that it was possible that all drivers would have to work out of the Plum facility because "everybody is going to be treated equal[ly]." This statement was substantively akin to that imputed to Tressler by Ruggiero, and plainly implied that Burrell district drivers risked curtailment of a work privilege merely by designation of the Union. Notwithstanding my misgivings concerning the quality of the General Counsel's proof, considering Tressler's admission I find that such a statement was made in Ruggiero's presence on January 28. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

A final allegation pertaining to January 28 evolves from an alleged instance of coercive interrogation attributed to Thomas Tangretti, Respondent's director of administration. According to Tangretti, he had a conversa-

[6] At the time, drivers for the Burrell district were not required to return their buses to the Plum garage each evening. Instead, the Company rented space in Burrell, and some could even take their equipment home. The statement imputed to Tressler clearly implied that a change in practice adverse to the Burrell drivers would accompany a union victory.

[7] Ruggiero testified that Bentz was a member of the Plum district employee committee, and I assume, based thereon, that she was assigned to the Plum school district.

[8] Consistent with this overall analysis was the fact that Ruggiero testified that other employees present on the occasion in question came to her seeking clarification of what Tressler had said concerning a strike. Ruggiero, herself, may well have misunderstood the precise nature of Tressler's remark and her interpretation may well be the source of the erroneous testimony related by the corroborating witnesses offered by the General Counsel.

[9] It is entirely possible that Ruggiero misunderstood Tressler's remark on that occasion, or later twisted his statement to support an argumentative confrontation with Markitell during the Company's antiunion meeting held shortly before the election. It is noted in this connection that all agree that at said meeting Ruggiero, in addressing Markitell, accused Tressler of having made the statement that Markitell would have the employees on strike the day after they designated the Union. All witnesses similarly agree, though in varying degrees, that Tressler reacted vehemently in denying that any such statement was made.

tion with Tressler that morning and was informed by the latter that the Union met with the Burrell drivers the previous evening and that during the meeting the Union advised those drivers that the Union did not seek them and that, if they did not want to be involved, they should not appear to vote in the election. According to Tangretti, he then sought confirmation of this charge by questioning several employees as to what was said at the meeting. According to Tangretti, the employees confirmed what Tressler had reported. The General Counsel contends that, by questioning of these employees, Respondent violated Section 8(a)(1) of the Act. On the basis of the meager evidence adduced with respect to this violation, it is assumed that Tangretti and Tressler did in fact receive information that Burrell drivers may have been misled by the Union. Any suggestion by the Union that the latter not vote would have been calculated to dilute influence of employees not strongly sympathetic to the organizational cause and to enhance unfairly the Union's opportunity to garner a majority during the election. Respondent had a legitimate interest in assuring that employees were not misled, by verifying whether in fact such an appeal had been made, and if so to correct it. Although there is no indication that the questioning was accompanied by assurances against coercion, a number of factors warrant a relaxation of such requirement on these premises. First, the immediacy of Tangretti's reaction to the possibility of such untoward conduct by the Union was perfectly understandable. Second, the drivers queried were apparently from the Burrell district and not within the prounion group. In these circumstances, to presume a coercive effect is to prefer technicality to reality. Accordingly, I find that the General Counsel has not established by a preponderance of the evidence that Tangretti's questioning of employees as to the specific representation made by the Union at the meeting of January 27 violated Section 8(a)(1).

4. Tressler's alleged interrogation of Myrtle Burton

Burton ascribed to Tressler an alleged instance of 8(a)(1) interrogation. Burton was a driver assigned to the Plum district. She testified that, a week or two before the election, she was in Tressler's office, discussing general issues, when the Union was mentioned. Tressler in the course of that conversation allegedly stated that "the Union is not going to do anything for you that we can't do for you," and then, assertedly, asked Burton what her opinion was. Burton opined that she had felt that way previously but that it had not worked out. Tressler then, allegedly, asked, "Are you for the Union?" Burton replied affirmatively. Burton's testimony was uncontradicted and credible. Based thereon, there being no evidence that Respondent had any legitimate purpose in attempting to discern her union sentiment, Tressler's conduct constituted coercive interrogation violative of Section 8(a)(1) of the Act.

5. The antiunion meeting

It is alleged that on or about February 12 Respondent violated Section 8(a)(1), through President Markitell's having "informed its employees that it would be futile for them to select the Union as their bargaining representative." In this connection, it is undisputed that a few days before the election Markitell addressed a meeting of Plum drivers, urging them to vote against union representation. The only evidence as to points made by Markitell on that occasion appeared in the testimony of Patricia Ruggiero and Virginia Thielman. According to Ruggiero, Markitell declared that the Union would preclude the employment of retirees and part-time drivers, that Burrell drivers would be awarded greater seniority than Plum drivers, and added that the Union would put the drivers on strike. Ruggiero, in effect, conceded that Markitell described the impaired conditions as originating with union practices and policy. Similarly, Thielman averred that Markitell stated, "All that Union could get for us was we would be paying dues . . . and that anybody that was a pensioned man would probably no longer be driving because it happened in other districts where the Union went in." Respondent argues that Markitell had simply expressed his opinion as to consequences of unionization in a fashion protected by free speech guarantees. However, the evidence on which the General Counsel relies, though sketchy, and at least in part offered through a witness of less than impressive reliability (Ruggiero) was not rebutted, and hence Markitell's references to detrimental work changes in the event of unionization are confirmed by uncontradicted proof. While some doubt lingers as to whether these utterances were not in fact made in the context of argumentation protected by Section 8(c) of the Act, the failure of Respondent to adduce proof in substantiation thereof precludes a finding that protected argumentation, devoid of threat, express or implied, was involved. Obviously, the adverse consequences alluded to, even if consistent with union policies, could obtain fruition only through employer assent during the course of collective bargaining. The Board has held that such statements, without further clarification by the employer, "could reasonably be regarded by employees as a threat of more onerous working conditions and of a reduction in benefits if they designated the Union as their collective bargaining representative." See *Sportspal, Inc.*, 214 NLRB 917 (1974). As Markitell's pronouncements were not shown to have been made under conditions permitting reasonable evaluation by employees as founded upon "demonstrably probable consequences beyond [Respondent's] control,"[10] in this respect, I find that Respondent violated Section 8(a)(1) of the Act.

IV. CASE 6-RC-8640

It has heretofore been found that during the critical preelection period Respondent Employer engaged in unfair labor practices, which substantiate the general allegations of misconduct set forth in Objection 4. Accordingly, Petitioner's Objection 4 is sustained to the extent that Respondent impeded free choice by coercive interrogation, by creating the impression of surveillance, by threatening to eliminate overnight parking privileges previously extended to Burrell drivers, by telling an em-

[10] *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 579, 618 (1969).

ployee that she was on "thin ice" because of her designation to an employee committee, and by declaring that unionization would lead to elimination of retired and part-time drivers and to an impairment of seniority among Plum drivers. Under Board precedent such unlawful conduct is sufficient to warrant a rerun election. The Board, in *Super Thrift Markets, Inc., t/a Enola Super Thrift*, 223 NLRB 409 (1977), recited that the only exception to its policy of setting aside elections in the face of unfair labor practices during the critical preelection period is "where the violations are such that it is virtually impossible to conclude that they could have affected the results of the election." No such conclusion is warranted here, and accordingly the first election shall be set aside and a rerun directed at such time as the Regional Director deems appropriate.

CONCLUSIONS OF LAW

1. Mark Lines, Inc., is an employer engaged in commerce and an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. Amalgamated Transit Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. By coercively interrogating an employee concerning her union activity, by creating the impression that union activity is subject to surveillance, by threatening an employee with reprisal because of her participation in activity protected by the Act, and by threatening employees with detrimental changes in conditions of work if they designated the Union, Respondent violated Section 8(a)(1) of the Act.
4. By the conduct set forth in paragraph 3, above, Respondent has engaged in preelection misconduct invalidating the election conducted on February 14, 1980.
5. The unfair labor practices found in paragraph 3, above, are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that it cease and desist therefrom and take certain affirmative action found necessary to effectuate the policies of the Act.

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent Employer, Mark Lines, Inc., Plum Boro, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from coercively interrogating employees concerning union activity, creating the impression that union activity is subject to surveillance, telling employees that working conditions would be altered to their detriment upon designation of a union, telling employees that their jobs would be jeopardized by participation in activity protected by the Act, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its facility in Plum Boro, Pennsylvania, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 6, shall be posted by Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election conducted on February 14, 1980, be, and it hereby is, set aside, and that Case 6-RC-8640 be severed and remanded to the Regional Director for Region 6 for the purpose of conducting a rerun election at such time as he deems appropriate.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate employees concerning their union activity.

WE WILL NOT create the impression that the union activity of employees is subject to surveillance.

WE WILL NOT tell employees that their jobs are in jeopardy because they have engaged in activity protected by the National Labor Relations Act.

WE WILL NOT tell our employees that their conditions of work will be changed to their detriment if they designate a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section of the Act.

MARK LINES, INC.